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Attorneys for Defendant KAISER FOUNDATION HOSPITALS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCELLA TRAN,

Plaintiff,

vs.

GEORGE HALVORSON, CEO/CHAIRMAN,
KAISER FOUNDATION HOSPITALS,
BETTIE COLES, RICHARD SIMMS;
PATRICIA HERNANDEZ; BRENDA
ROBINSON, MILTON AQUINO; EARLENE
PERSON, YOLANDA CHAVEZ; SAL
CURSIO and DOES 1 through 20, Inclusive,

Defendants.

USDC Case No. 07 CV 4384 PJH

**DEFENDANT KAISER FOUNDATION
HOSPITALS' ANSWER TO
PLAINTIFF'S COMPLAINT**

Defendant KAISER FOUNDATION HOSPITALS, ("Defendant") responds to Plaintiff
MARCELLA TRAN'S ("Plaintiff") Complaint for Damages ("Complaint") as follows:

PRELIMINARY STATEMENTS

1. The allegations contained in Paragraph 1 of the Complaint are not directed at
Defendant, accordingly no response is required.

2. Defendant admits that George Halvorson, Bettie Coles, Richard Simms, Patricia
Hernandez, Brenda Robertson (erroneously sued as Brenda Robinson), Milton Aquino, Earlene
Person, and Yolanda Chavez were at all relevant times employed by Defendant. Defendant
denies that it ever employed Sal Cursio. Defendant no longer employs Milton Aquino. The

1 remaining allegations contained in Paragraph 2 of the Complaint contain conclusions of law to
2 which no response is required. Except as so admitted, Defendant, denies the allegations in
3 Paragraph 2.

4 3. Defendant admits the allegations contained in Paragraph 3 of the Complaint.

5 4. Defendant admits it is a California not-for-profit corporation. The remaining
6 allegations contained in Paragraph 4 of the Complaint contain conclusions of law, to which no
7 response is required. Except as so admitted, Defendant, denies the allegations in Paragraph 4.

8 5. The allegations contained in Paragraph 5 of the Complaint are not directed at
9 Defendant, accordingly no response is required.

10 6. The allegations contained in Paragraph 6 of the Complaint are not directed at
11 Defendant, accordingly no response is required.

12 7. The allegations contained in Paragraph 7 of the Complaint are not directed at
13 Defendant, accordingly no response is required.

14 8. The allegations contained in Paragraph 8 of the Complaint are not directed at
15 Defendant, accordingly no response is required.

16 9. The allegations contained in Paragraph 9 of the Complaint are not directed at
17 Defendant, accordingly no response is required.

18 10. The allegations contained in Paragraph 10 of the Complaint are not directed at
19 Defendant, accordingly no response is required.

20 11. The allegations contained in Paragraph 11 of the Complaint are not directed at
21 Defendant, accordingly no response is required.

22 12. The allegations contained in Paragraph 12 of the Complaint are not directed at
23 Defendant, accordingly no response is required.

24 13. The allegations contained in Paragraph 13 of the Complaint are not directed at
25 Defendant, accordingly no response is required.

26 **FIRST CAUSE OF ACTION**

27 14. Defendant incorporates by reference its responses to the allegations contained in
28 paragraphs 1-13 of the Complaint as though fully set forth herein.

1 15. The allegations contained in Paragraph 15 of the Complaint contain conclusions of
2 law to which no response is required.

3 16. The allegations contained in Paragraph 16 of the Complaint contain conclusions of
4 law to which no response is required.

5 17. In answering Paragraph 17 of Plaintiff's Complaint, Defendant notes that Plaintiff
6 alleges "Defendants have discriminated against Plaintiff on the basis of race, national origin, age
7 and physical disability in violation of Cal. Gov't Section 12940 by engaging in the following
8 course of conduct:" Paragraph 17 then extends for nearly six pages, consisting of
9 approximately 22 unnumbered subparagraphs describing various allegations against Defendants.
10 The rules of pleading require "simple, concise and direct" averments. See Fed. Rule of Civ.
11 Proc. 8(e)(1); *see also McHenry v. Renne* (9th Cir. 1996) 84 F.3d 1172, 80 (stating "[s]omething
12 labeled a complaint but written more as a press release, prolix in evidentiary detail, yet without
13 simplicity, conciseness and clarity . . . fails to perform the essential functions of a complaint").
14 Paragraph 17 fails to satisfy the requirement of setting forth "simple, concise and direct"
15 allegations, making it unduly burdensome and harassing for Defendant to respond to each and
16 every myriad allegation contained therein. Defendant, however, admits that Plaintiff's
17 employment as a janitor was terminated following investigation into an incident involving
18 Plaintiff's physical assault of a co-worker in a Kaiser pharmacy. Both Kaiser Security and the
19 Oakland Police Department responded to the scene. Plaintiff's assault on her co-worker left that
20 individual with swelling and bruising to her face. At the time of Plaintiff's assault, she was
21 already undergoing disciplinary counseling for her poor attitude and insubordination in the
22 workplace. Defendant further admits, based on information and belief, that Plaintiff's Union
23 refused to proceed with its grievance against Defendant on Plaintiff's behalf when it learned the
24 facts surrounding the events leading to Plaintiff's termination. The remaining allegations
25 contained in Paragraph 17 either contain conclusions of law to which no response is required or
26 concern matters to which Defendant is without sufficient knowledge or information to form a
27 belief as to their truth and so on that basis denies each and every allegation contained therein.
28

1 18. The allegations contained in Paragraph 18 of the Complaint contain conclusions of
2 law to which no response is required.

3 19. The allegations contained in Paragraph 19 of the Complaint contain conclusions of
4 law to which no response is required.

5 20. The allegations contained in Paragraph 20 of the Complaint contain conclusions of
6 law to which no response is required.

7 21. The allegations contained in Paragraph 21 of the Complaint contain conclusions of
8 law to which no response is required.

9 **SECOND CAUSE OF ACTION**

10 22. Defendant incorporates by reference its responses to the allegations contained in
11 paragraphs 14-22 of the Complaint as though fully set forth herein.

12 23. The allegations contained in Paragraph 23 of the Complaint contain conclusions of
13 law to which no response is required.

14 24. The allegations contained in Paragraph 24 of the Complaint contain conclusions of
15 law to which no response is required.

16 **THIRD CAUSE OF ACTION**

17 25. Defendant incorporates by reference its responses to the allegations contained in
18 paragraphs 1-13 of the Complaint as though fully set forth herein.

19 26. The allegations contained in Paragraph 26 of the Complaint contain conclusions of
20 law to which no response is required.

21 27. The allegations contained in Paragraph 27 of the Complaint contain conclusions of
22 law to which no response is required.

23 28. In answering Paragraph 28 of Plaintiff's Complaint, Defendant notes that Plaintiff
24 alleges "Defendants have discriminated and retaliated against Plaintiff on the basis of race,
25 national origin, age and physical disability because Plaintiff opposes a discriminatory practice or
26 asserts rights under Cal. Gov't Section 12940(f) by engaging in the following course of conduct:
27" Paragraph 28 then extends for nearly six pages, consisting of approximately 22
28 unnumbered subparagraphs describing the alleged course of conduct. The rules of pleading.

1 require "simple, concise and direct" averments. See Fed. Rule of Civ. Proc. 8(e)(1); *see also*
2 *McHenry v. Renne* (9th Cir. 1996) 84 F.3d 1172, 80 (stating "[s]omething labeled a complaint
3 but written more as a press release, prolix in evidentiary detail, yet without simplicity,
4 conciseness and clarity . . . fails to perform the essential functions of a complaint"). Paragraph
5 28 fails to satisfy the requirement of setting forth "simple, concise and direct" allegations,
6 making it unduly burdensome and harassing for Defendant to respond to each and every
7 allegation contained therein. Defendant, however, admits that Plaintiff's employment as a
8 janitor was terminated following investigation into an incident involving Plaintiff's physical
9 assault of a co-worker in a Kaiser pharmacy. Both Kaiser Security and the Oakland Police
10 Department responded to the scene. Plaintiff's assault on her co-worker left that individual with
11 swelling and bruising to her face. At the time of Plaintiff's assault, she was already undergoing
12 disciplinary counseling for her poor attitude and insubordination in the workplace. Defendant
13 further admits, based on information and belief, that Plaintiff's Union refused to proceed with its
14 grievance against Defendant on Plaintiff's behalf when it learned the facts surrounding the
15 events leading to Plaintiff's termination. The remaining allegations contained in Paragraph 28
16 either contain conclusions of law to which no response is required or concern matters to which
17 Defendant is without sufficient knowledge or information to form a belief as to their truth and so
18 on that basis denies each and every allegation contained therein.

19 **FOURTH CAUSE OF ACTION**

20 29. Defendant incorporates by reference its responses to the allegations contained in
21 paragraphs 22-24 of the Complaint as though fully set forth herein.

22 30. The allegations contained in Paragraph 30 of the Complaint contain conclusions of
23 law to which no response is required.

24 31. The allegations contained in Paragraph 31 of the Complaint contain conclusions of
25 law to which no response is required.

FIFTH CAUSE OF ACTION

32. Defendant incorporates by reference its responses to the allegations contained in paragraphs 1-13 of the Complaint as though fully set forth herein.

33. Defendant admits the allegations contained in Paragraph 33 of the Complaint.

34. Defendant denies that an express or implied in fact contract ever existed between Plaintiff and Defendant. The remaining allegations contained in Paragraph 34 of the Complaint are not directed at Defendant, accordingly no response is required.

A. Defendant denies the allegations contained in Paragraph 34, subpart A of the Complaint.

B. Defendant denies the allegations contained in Paragraph 34, subpart B of the Complaint.

C. Defendant denies the allegations contained in Paragraph 34, subpart C of the Complaint.

D. Defendant denies the allegations contained in Paragraph 34, subpart D of the Complaint.

E. Defendant denies the allegations contained in Paragraph 34, subpart E of the Complaint.

F. Defendant denies the allegations contained in Paragraph 34, subpart F of the Complaint.

35. Defendant denies the allegations contained in Paragraph 35 of the Complaint:

A. Defendant denies the allegations contained in Paragraph 35, subpart A of the Complaint.

B. Defendant denies the allegations contained in Paragraph 35, subpart B of the Complaint.

C. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35, subpart C and so on that basis denies each and every allegation contained therein.

1 36. Defendant is without sufficient knowledge or information to form a belief as to the
2 truth of the allegations contained in Paragraph 36 and so on that basis denies each and every
3 allegation contained therein.

4 37. Defendant is without sufficient knowledge or information to form a belief as to the
5 truth of the allegations contained in Paragraph 37 and so on that basis denies each and every
6 allegation contained therein.

7 38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.

8 A. Defendant denies the allegations contained in Paragraph 38, subpart A of the
9 Complaint.

10 B. Defendant denies the allegations contained in Paragraph 38, subpart B of the
11 Complaint.

12 C. Defendant denies the allegations contained in Paragraph 35, subpart C of the
13 Complaint.

14 39. Defendant denies that an express or implied in fact contract ever existed between
15 Plaintiff and Defendant. The remaining allegations contained in Paragraph 39 of the Complaint
16 are either not directed at Defendant or contain conclusions of law to which no response is
17 required, accordingly Defendant does not respond to the remaining allegations contained in
18 Paragraph 39. To the extent a response is required, Defendant denies each and every allegation
19 contained in Paragraph 39.

20 40. Defendant denies that an express or implied in fact contract ever existed between
21 Plaintiff and Defendant. The remaining allegations contained in Paragraph 40 of the Complaint
22 are either not directed at Defendant or contain conclusions of law to which no response is
23 required, accordingly Defendant does not respond to the remaining allegations contained in
24 Paragraph 40. To the extent a response is required, Defendant denies each and every allegation
25 contained in Paragraph 40.

26 41. Defendant denies that an express or implied in fact contract ever existed between
27 Plaintiff and Defendant. Defendant is without sufficient knowledge or information to form a
28

1 belief as to the truth of the of the remaining allegations contained in Paragraph 41, and so on that
2 basis denies each and every allegation contained therein.

3 **SIXTH CAUSE OF ACTION**

4 42. Defendant incorporates by reference its responses to the allegations contained in
5 paragraphs 1-13 of the Complaint as though fully set forth herein.

6 43. Defendant denies that an express or implied in fact contract ever existed between
7 Plaintiff and Defendant and on that basis denies each and every allegation contained in
8 Paragraph 43.

9 44. Defendant is without sufficient knowledge or information to form a belief as to the
10 truth of the allegations contained in Paragraph 44 and so on that basis denies each and every
11 allegation contained therein.

12 45. Defendant denies that an express or implied in fact contract ever existed between
13 Plaintiff and Defendant and on that basis denies each and every allegation contained in
14 Paragraph 45.

15 A. Defendant denies the allegations contained in Paragraph 45, subpart A of the
16 Complaint.

17 B. Defendant denies the allegations contained in Paragraph 45, subpart B of the
18 Complaint.

19 C. Defendant denies the allegations contained in Paragraph 45, subpart C of the
20 Complaint.

21 D. Defendant denies the allegations contained in Paragraph 45, subpart D of the
22 Complaint

23 E. Defendant denies the allegations contained in Paragraph 45, subpart E of the
24 Complaint

25 F. Defendant denies the allegations contained in Paragraph 45, subpart F of the
26 Complaint.

1 46. Defendant denies that an express or implied in fact contract ever existed between
2 Plaintiff and Defendant and on that basis denies each and every allegation contained in
3 Paragraph 46.

4 A. Defendant denies the allegations contained in Paragraph 46, subpart A of the
5 Complaint.

6 B. Defendant denies the allegations contained in Paragraph 46, subpart B of the
7 Complaint.

8 C. Defendant denies the allegations contained in Paragraph 46, subpart C of the
9 Complaint.

10 47. Defendant denies that an express or implied in fact contract ever existed between
11 Plaintiff and Defendant and on that basis denies each and every allegation contained in
12 Paragraph 47.

13 48. Defendant denies that an express or implied in fact contract ever existed between
14 Plaintiff and Defendant and on that basis denies each and every allegation contained in
15 Paragraph 47.

16 **SEVENTH CAUSE OF ACTION**

17 49. Defendant incorporates by reference its responses to the allegations contained in
18 Paragraphs 1-13 of the Complaint as though fully set forth herein.

19 50. Defendant denies that it violated California Government Code § 12940 et seq., in
20 particular Defendant denies that it failed to prevent any alleged harassment, discrimination or
21 retaliation against Plaintiff.

22 51. Defendant denies the allegations contained in Paragraph 51 of the Complaint.

23 52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.

24 **EIGHTH CAUSE OF ACTION**

25 53. Defendant incorporates by reference its responses to the allegations contained in
26 Paragraphs 1-13 and Paragraphs 32- 41 of the Complaint as though fully set forth herein.

27 54. Defendant denies the allegations contained in Paragraph 54 of the Complaint.

28 55. Defendant denies the allegations contained in Paragraph 55 of the Complaint.

56. Defendant denies the allegations contained in Paragraph 56 of the Complaint.

57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.

58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.

59. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 59 and so on that basis denies each and every allegation contained therein.

60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.

NINTH CAUSE OF ACTION

61. Defendant incorporates by reference its responses to the allegations contained in Paragraphs 1-13 of the Complaint as though fully set forth herein.

62. The allegations contained in Paragraph 62 of the Complaint contain conclusions of law to which no response is required.

63. The allegations contained in Paragraph 63 of the Complaint contain conclusions of law to which no response is required.

64. The allegations contained in Paragraph 64 of the Complaint contain conclusions of law to which no response is required.

65. Defendant denies the allegations contained in Paragraph 65 of the Complaint.

66. Defendant denies the allegations contained in Paragraph 66 of the Complaint.

67. Defendant's allegation that she exhausted all of her administrative remedies constitutes a conclusion of law to which no response is required. Defendant is without sufficient knowledge or information to form a belief as to the truth of the of the remaining allegations contained in Paragraph 67, and so on that basis denies each and every allegation contained therein.

68. Defendant denies the allegations contained in Paragraph 68 of the Complaint.

69. Defendant denies the allegations contained in Paragraph 69 of the Complaint.

70. Defendant denies the allegations contained in Paragraph 70 of the Complaint.

SEPARATE DEFENSES

By way of defenses to the allegations of the COMPLAINT herein, Defendant alleges as follows:

FIRST SEPARATE DEFENSE

(Failure to State a Cause of Action -- all causes of action)

Plaintiff's COMPLAINT, and each purported cause of action alleged therein, fails to state facts sufficient to constitute a cause of action upon which any relief may be granted.

SECOND SEPARATE DEFENSE

(Statute of Limitations -- all causes of action)

Plaintiff's purported causes of action are barred by the applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure §§ 335.1, 337(1), 338(a), 339(1), and California Government Code §§ 12960 and 12965.

THIRD SEPARATE DEFENSE

(Workers' Compensation Preemption -- all causes of action)

Any and all claims by Plaintiff based in whole or in part upon any alleged physical or emotional injury or distress to Plaintiff are barred and preempted by the exclusivity provisions of the California Workers' Compensation Act. (Labor Code §§ 3200 et seq.).

FOURTH SEPARATE DEFENSE

(Ratification -- all causes of action)

Plaintiff's purported causes of action are barred in whole or in part to the extent that any conduct attributable to Defendant was ratified by Plaintiff.

FIFTH SEPARATE DEFENSE

(Waiver -- all causes of action)

Plaintiff's purported causes of action are barred in whole or in part by the doctrine of waiver.

SIXTH SEPARATE DEFENSE

(Equitable Estoppel -- all causes of action)

Plaintiff's purported causes of action are barred in whole or in part by Plaintiff's own

1 improper conduct, acts or omissions, and therefore, he is equitably estopped from recovering on
2 any of her claims.

3 **SEVENTH SEPARATE DEFENSE**

4 (Unclean Hands -- all causes of action)

5 Plaintiff's purported causes of action are barred in whole or in part by the doctrine of
6 unclean hands.

7 **EIGHTH SEPARATE DEFENSE**

8 (At-Will Employment -- all causes of action)

9 Plaintiff's purported causes of action are barred pursuant to California Labor Code
10 § 2922 in that Plaintiff's employment was, at all times, at-will.

11 **NINTH SEPARATE DEFENSE**

12 (Failure to Mitigate Damages -- all causes of action)

13 Plaintiff is not entitled to back pay and/or other damages, to the extent that she failed to
14 seek and obtain other employment and otherwise failed to mitigate her alleged loss of wages or
15 other damages.

16 **TENTH SEPARATE DEFENSE**

17 (Good Cause -- all causes of action)

18 Legal and good cause for Defendant's actions existed pursuant to law.

19 **ELEVENTH SEPARATE DEFENSE**

20 (Good Faith -- all causes of action)

21 Defendant acted reasonably and in good faith at all times material herein based on all
22 relevant facts and circumstances known by Defendant.

23 **TWELFTH SEPARATE DEFENSE**

24 (Legitimate Non-Discriminatory Factors -- all causes of action)

25 Plaintiff's purported causes of action are barred in whole or in part because all actions
26 undertaken by Defendants were based on legitimate and non-discriminatory business reasons,
27 purposes, or necessity.

1 **THIRTEENTH SEPARATE DEFENSE**

2 (Privilege or Justification -- all causes of action)

3 Plaintiff's purported causes of action are barred because any actions and/or omissions
4 attributable to Defendant were at all times privileged or justified.

5 **FOURTEENTH SEPARATE DEFENSE**

6 (No Punitive Damages -- all causes of action)

7 Plaintiff is not entitled to recover any punitive or exemplary damages, and any allegations
8 with respect thereto should be stricken because Plaintiff has failed to plead and cannot prove
9 facts sufficient to support allegations of oppression, fraud and/or malice pursuant to California
10 Civil Code § 3294. Plaintiff's claim for punitive damages is further barred because it violates
11 the due process clauses of the California Constitution and the Constitution of the United States of
12 America.

13 **FIFTEENTH SEPARATE DEFENSE**

14 (After Acquired Evidence – all Causes of Action)

15 Defendant is informed and believes and thereon alleges that Plaintiff's COMPLAINT,
16 and each purported cause of action alleged therein, is barred in whole or in part by the doctrine
17 of after-acquired evidence or, alternatively, the doctrine of after-acquired evidence limits and
18 reduces Plaintiff's alleged damages.

19 **SIXTEENTH SEPARATE DEFENSE**

20 (Management Discretion – all Causes of Action)

21 Any and all conduct of which Plaintiff complains or which is attributed to Defendant was
22 a just and proper exercise of management discretion on the part of Defendant undertaken for a
23 fair and honest reason.

24 **SEVENTEENTH SEPARATE DEFENSE**

25 (Attorneys' Fees - all Causes of Action)

26 Plaintiff knew or should have known that the Complaint, and each of the causes of action
27 alleged therein, is without any reasonable basis in law and equity and cannot be supported by a
28 good faith argument for extension, modification, or reversal of existing law. As a result of

1 Plaintiff's filing of this lawsuit, Defendant has been required to obtain the services of the
2 undersigned attorneys and have and will continue to incur substantial costs and attorneys' fees in
3 defense of this frivolous case. Defendant is therefore entitled to recover reasonable attorneys'
4 fees, expenses, and costs incurred by and through this action in accordance with California Code
5 of Civil Procedure § 128.5.

6 **EIGHTEENTH SEPARATE DEFENSE**

7 (Alternative Stressors -- all causes of action)

8 To the extent that Plaintiff has suffered symptoms of mental or emotional distress or
9 injury, such symptoms are the result of a preexisting psychological or physical disorder or an
10 alternative concurrent cause, and not the result of any act or omission of Defendants.

11 **NINETEENTH SEPARATE DEFENSE**

12 (Willful Misconduct -- all causes of action)

13 Plaintiff was, at all times and places set forth in the COMPLAINT, guilty of willful
14 misconduct in and about the matters alleged therein, which willful misconduct bars Plaintiff from
15 recovery.

16 **TWENTIETH SEPARATE DEFENSE**

17 (Condition Precedent-- all Causes of Action)

18 The conditions precedent to Defendant's performance under any employment contract, if
19 one in fact even existed, did not occur and/or were not performed by Plaintiff, and Defendant,
20 therefore, are not obligated to perform under any such contract.

21 **TWENTY-FIRST SEPARATE DEFENSE**

22 (Labor Code § 2924-- all Causes of Action)

23 Plaintiff's causes of action are barred pursuant to California Labor Code § 2924 in that
24 Plaintiff willfully breached her duties in the course of her employment, neglected her duties as an
25 employee, or continually was incapable of performing such duties.

1 **TWENTY-SECOND SEPARATE DEFENSE**

2 (Labor Code § 2854 and 2856--all Causes of Action)

3 Plaintiff's claims are barred by virtue of California Labor Code sections 2854 and 2856
4 in that Plaintiff failed to use ordinary care and diligence in the performance of her duties and
5 failed to comply substantially with the reasonable directions of her employer.

6 **TWENTY-THIRD SEPARATE DEFENSE**

7 (Accord and Satisfaction – second and third Causes of Action)

8 Plaintiff's Complaint, and each of the causes of action alleged therein, is barred by the
9 doctrine of accord and satisfaction and release and waiver.

10 **TWENTY-FOURTH SEPARATE DEFENSE**

11 (Breach of Contract – second and third Causes of Action)

12 Plaintiff's claims are barred as to any claim based on any alleged contract because
13 Plaintiff substantially and materially breached the contract, if any there were, complained of
14 prior to the commencement of this action, which conduct extinguishes the right to maintain this
15 action.

16 **TWENTY-FIFTH SEPARATE DEFENSE**

17 (Failure to Exhaust Administrative Remedies-All Causes of Action)

18 Plaintiff's purported causes of action are barred based on her failure to exhaust her
19 administrative remedies under the California Government Code and/or the applicable Collective
20 Bargaining Agreement.

21 **ADDITIONAL DEFENSES**

22 Defendant presently has insufficient knowledge or information upon which to form a
23 belief whether there may be additional, as yet unstated, defenses and reserve the right to assert
24 additional defenses in the event that discovery indicates that such defenses are appropriate.

25 WHEREFORE, having answered Plaintiff's complaint, Defendant prays:

26 1. That this Answer be deemed good and sufficient;
27
28

2. That the Complaint be dismissed with prejudice and that Plaintiff take nothing thereby;

3. In the alternative, after due proceedings are had, there be a judgment herein in favor of Defendant and against Plaintiff;

4. That Defendant be awarded its costs of suit and reasonable attorneys' fees and expenses;

5. That Defendant be awarded pre-judgment interest on the foregoing costs and attorneys' fees at the maximum rate permitted by law;

6. That Defendant be awarded post-judgment interest on the foregoing amount at the maximum rate permitted by law; and,

7. That Defendant be awarded such other relief as the Court may deem just and proper.

DATED: September 12, 2007

SEYFARTH SHAW LLP

By /s/
Dana L. Peterson
Andrew M. McNaught

Attorneys for Defendant
KAISER FOUNDATION HOSPITALS